THE HON'BLE SRI JUSTICE A.GOPAL REDDY

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WRIT PETITION No.7924 of 1995

DATED: 17-03-2006

Between:

S.Raja Lakshmi . . .Petitioner

And

KUDA, Warangal,

and another . . .Respondents

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

WRIT PETITION No.7924 of 1995

O R D E R:

The petitioner, who claims to have purchased a plot admeasuring 210 sq.yards equivalent to 175.71 sq.mts bearing Plot No.13 of Ward No.11, under a registered sale deed *vide* document No.3115 of 1965, dated 27-12-1965, filed the present writ petition complaining that without resorting to any lawful procedure to acquire the said plot, the respondents highhandedly laid the road in December, 1994, covering an extent of
110 sq.yards and completed the same. By virtue of laying the road over 110 sq.yards, the balance of 100 sq.yards of land, which is in a triangle shape, virtually becomes useless and lost its potentiality. Therefore, he got issued a legal notice, dated 04-02-1995, to the respondents calling upon them for payment of compensation of Rs.3,15,000/- together with interest. Having received the said notice, the respondents neither replied nor complied with.

The first respondent, Kakatiya Urban Development Authority, Warangal, filed a counter affidavit stating that the plot of the petitioner is not an approved one. It is also stated that the petitioner has not obtained any ceiling clearance from the competent authority and has not paid developmental charges under the provisions of the Andhra Pradesh Urban Areas Development Act, 1975 (for short 'the Act'). After taking over possession of the land from the Municipality, the road was laid. It is further stated that in response to the legal notice, dated
04-02-1995, reply was given disputing the compensation and therefore, prayed for

dismissal of the writ petition.

The fact of the petitioner purchasing the property, as early as in the year 1965, under a registered sale deed has not been denied.

As per Explanation II to Section 3 of the Transfer of Property Act, 1882, any person acquiring any immovable property or any share or interest in any such property, shall be deemed to have notice of the title, if any, of any person, who is for the time being in actual possession thereof.

When the first respondent itself was constituted under the provisions of the Act, obtaining ceiling clearance and approval by paying developmental charges for the land, which was converted into plots and sold in 1965 does not arise. No provision has been brought to the notice of this Court that the land, which was converted into plots prior to coming into force of the Act, can be acquired without payment of any compensation by the first respondent for the alleged violation. Though the first respondent has taken the stand in paragraph 3 of the counter affidavit that the second respondent-Municipal Corporation, Warangal, handed over the possession of the land in question to it for laying the road, learned Standing Counsel for the second respondent has not chosen to file any counter contradicting the said fact.

Learned standing counsel for the second respondent refuting the case of the petitioner submits that they have handed over the possession of the land to an extent of 110 sq.yards to the first respondent for laying the road and that they are not under an obligation to acquire the remaining extent of 100 sq.yards of land.

Even if they are not under an obligation to acquire
remaining 100 sq.yards of land, they are under an obligation to pay compensation to the petitioner for the land acquired and handed over to the first respondent, by initiating land acquisition proceedings. When the property of an individual is compulsorily diverted to some other purpose, strict compliance of statute to be followed. The laying of the road in the property belongs to an individual without following due process of law is nothing but highhanded action of the authorities and the same is in violation of Article 300-A of the Constitution, and it cannot be permitted in a civilized society, which is governed by Rule of law.

In the circumstances, the second respondent-Municipal Corporation,

Warangal, is hereby directed to pay a sum of Rs.1,00,000/- (Rupees One Lakh only) to the petitioner towards compensation for the land acquired, within four weeks from today. The second respondent is also directed to initiate land acquisition proceedings for the property, which was acquired and handed over to the first respondent, and complete the award enquiry within three months from the date of issuance of notification. If any award is passed, the amount which was now being paid to the petitioner will be given due credit. If the petitioner feels aggrieved that the remaining property has become useless by severance, he can claim compensation under different heads as contemplated under Section 23 of the Act during the course of award enquiry.

The writ petition is allowed with costs of Rs.5,000/- (Rupees Five thousand only) payable by the second respondent to the petitioner.

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(A.GOPAL REDDY, J)

17th MARCH, 2006.

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